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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963.

No. 76

SIDNEY ARCENEAUX,

Petitioner,

versus

STATE OF LOUISIANA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

BRIEF ON BEHALF OF RESPONDENT, STATE OF LOUISIANA.

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STATEMENT OF THE CASE.

The accused, Sidney Arceneaux, was charged with the crime of vagrancy by affidavit executed by Deputy Sheriff Mayo Decou, and the said affidavit was filed in the Fifteenth Judicial District Court of the Parish of Lafayette, Louisiana, on January 29, 1962. (R. pp. 21-22.)

Based upon said affidavit, a warrant for the arrest of the accused was issued by the committing magistrate, and the bond for the appearance of the accused was set at $50.00. (R. pp. 24-25.)

On February 28, 1962, a motion was filed in the said District Court on behalf of the accused alleging that the accused was incarcerated in the parish jail charged by affidavit with the offense of vagrancy, that no indictment or bill of information had been filed against him and praying for a preliminary examination. The motion was granted by the district judge, and a hearing was set for March 8, 1962. (R. pp. 26-27.)

The preliminary examination was continued by the Court to March 9, 1962. On March 9, 1962, the district attorney filed a bill of information in the said Court charging the accused with the crime of vagrancy. (R. pp. 28-29.) Thereupon, the district judge recalled his order for a preliminary examination, stating that he had done so because the district attorney had filed a bill of information. (R. pp. 31-33.)

On March 13, 1962, an application was made on behalf of the accused to the Supreme Court of Louisiana for writs of *habeas corpus*, and, alternatively, certiorari, mandamus and prohibition, to the district judge, in which he complains of the judge's ruling recalling his order granting the accused a preliminary examination. (R. pp. 4-16.)

On March 16, 1962, the Supreme Court of Louisiana refused writs, saying that there was no error in the ruling complained of. (R. p. 1.)

On March 28, 1962, an application was made on behalf of the accused to the Supreme Court of the United States for writ of certiorari to the Supreme Court of the State of Louisiana.

On May 31, 1962, the accused appeared in the City Court of the City of Lafayette, Louisiana, and there pleaded guilty to the charge of vagrancy, which had been transferred to said Court from the Fifteenth Judicial District Court. The accused was then sentenced to serve four months in the parish jail. The city judge gave him credit for time served, and he was forthwith discharged. (Exhibits "A" and "B.")

On June 7, 1962, the district attorney dismissed the bill of information previously filed in the Fifteenth Judicial District Court. (Exhibit "C.") This action disposed of all criminal charges of vagrancy against the accused.

On October 16, 1962, a supplemental petition was filed on behalf of the accused in the United States Supreme Court praying for writ of certiorari to the Supreme Court of the State of Louisiana.

On February 18, 1963, the Supreme Court of the United States granted writ of certiorari to the Supreme Court of the State of Louisiana.

ARGUMENT.

I.

After the Filing of a Bill of Information by the District Attorney, It Is Wholly Within the Discretion of the District Court to Grant or Refuse to Grant a Preliminary Examination to an Accused.

The application to the United States Supreme Court for writ of certiorari to the Supreme Court of the State of Louisiana is based upon the refusal of the state district judge to grant the accused a preliminary examination. The Louisiana law relating to the granting of a preliminary examination is found under Louisiana Revised Statutes 15:154, which reads as follows, to-wit:

> "Either the state or the defendant shall have the right to demand a preliminary examination; provided that after an indictment found or an information filed, it shall be wholly within the discretion of the district court, and not subject to review by any other court, to order or to refuse to order a preliminary examination; nor shall such examination be held in any case in which the offense charged is within the trial jurisdiction of any city or municipal court."

It is clear that an accused is entitled to a preliminary examination as a matter of right where he is charged with a crime by affidavit. However, when the district attorney files a bill of information against him charging him with a crime, the granting of a preliminary examination becomes discretionary with the district Court. Therefore, the district judge did not err in recalling his

order granting the accused a preliminary examination after the district attorney had filed a bill of information against the accused. No federal constitutional question is involved.

II.

The Louisiana Vagrancy Law Under Which the Accused Was Charged Is Clear and Readily Understandable and Does Not Deny the Accused Due Process and Equal Protection Guaranteed by the Fourteenth Amendment to the Constitution of the United States, Nor Does It Violate His Privileges Under the Fifth Amendment to the Constitution of the United States.

The Louisiana vagrancy law is similar to the vagrancy laws of other states and the District of Columbia, which have always been considered clear, concise and constitutional. That part of the *Louisiana Revised Statutes* (Title 14, Section 107(8)) under attack reads as follows:

> "The following persons are and shall be guilty of vagrancy:"
>
> * * * * * * *
>
> "(8) Persons who are found in or near any structure, movable, vessels, or private grounds, without being able to account for their lawful presence therein."
>
> * * * * * * *
>
> "The legislatures and municipal governing bodies acting under delegated authority may within constitutional limitations enact statutes or ordinances

defining vagrancy and imposing punishment for the offense.

"Within limitations imposed by the organic law of the state and federal governments, legislatures and municipal governing bodies, acting under delegated authority, may, by statute or ordinance, define vagrancy and impose punishment for the offense. In the main, the validity of statutes or ordinances of this character has been upheld as against objections that they were in violation of the state or federal constitutions, and the enactment thereof declared to be a valid exercise of the police power.

"Thus, statutes or ordinances have been upheld which define as vagrants, able-bodied persons who habitually load, loiter, and idle in any public place for the larger portion of their time, without regular employment and without any visible means of support; persons loitering, without legitimate reason, on or near a public school being attended by children; persons known to be pickpockets, thieves, or burglars, and having no visible means of support, if found prowling around a steamboat landing, railroad depot, place of public amusement, or at any public gathering or assembly; persons who may be found loitering around houses of ill fame, gambling houses, or places where liquor is sold or drunk, without any visible means of support; persons tramping or wandering around from place to place without visible means of support; persons found loitering, without visible means of support,

in any community; 'confidence operators'; 'common prostitutes'; 'lewd or dissolute persons'; lewd, disorderly, or dissolute persons; every person who roams from place to place without any lawful business; persons pretending to tell fortunes; professional gamblers; persons soliciting business for professional gamblers; male persons habitually associating with prostitutes and habitually loitering around houses of prostitution; and 'persons engaged in any unlawful calling.' Such statutes are not rendered invalid by failure to define therein words of general use easily understood by men of average intelligence." (91 C. J. S. 779.)

"Under some statutes, persons wandering about the streets at late hours of the night without any visible or lawful business, and unable to give a good account of themselves are vagrants.

"Under some statutes, every person who wanders about the streets at late or unusual hours of the night without any visible or lawful business, and not giving a good account of himself, is a vagrant. It is not necessary, under such a provision, that accused committed any overt act. The words 'visible or lawful business' are used in the sense of good and sufficient reason, and they refer to the reason why accused is roaming the streets rather than any business or avocation in life from which support is derived. The purpose of such statutes is to enable law enforcement officers to keep the streets clear at late and unusual hours of the night of those persons who, by reason of

being bent on serious mischief, theft, or burglary have no visible or lawful business or mission in the locality. It is not to be construed as a curfew law, forbidding persons to be on the streets after a certain hour of the night, and officers of the law have no right to compel one to account for his actions merely because that person is on the street at an unusual hour.

"On the other hand, when one's wandering and conduct on the streets at a late or unusual hour is such as to give reasonable grounds for the belief that his purpose in being on the street is not a legitimate one, the law may validly require that he be called on to account for his actions and may deem his failure to give a good account as proof that his purpose on the street is not a legitimate one. There must be an order or demand, however, to accused for an explanation of his presence in the street and replies by accused to casual or bantering questions will not support a conviction. Where all the elements of the offense as enumerated in the statute are present, a conviction of vagrancy is authorized, notwithstanding accused might be a person of fixed abode having lawful means of support.

"Under a city ordinance providing that a person found wandering or loitering without being able to give a satisfactory account of himself may be convicted as a suspicious person, a person who was in a forbidden place for a short time to consult his attorney on legal matters has been held not to be

wandering or loitering, and prior periods of loitering and incarceration in various state jails may not be cumulated for the purpose of a conviction." (91 C. J. S. 783.)

"Other persons held to be or not to be vagrants within the meaning of vagrancy statutes, and not previously considered in this section are here considered. Persons engaged in any unlawful calling; persons who beg for alms or solicit charity; persons selling intoxicating liquors; persons apprehended having on them burglar tools under circumstances from which an intent may be presumed feloniously to break and enter into any dwelling house, warehouse, storehouse, or other specified buildings; 'dissolute' persons; 'confidence operators'; persons who annoy or molest children under age of eighteen; a common drunkard; persons leading an idle, immoral, or profligate life who have no property to support them, and who are able to work and do not work; persons who annoy or molest school children, or persons who loiter about any school or public place at or near which school children attend; persons tramping or wandering around from place to place without visible means of support, or without any lawful business; one who is apt to become a public charge through his own laziness; persons found loitering about saloons or gambling houses, or tramping through the country without visible means of support; persons having 'no lawful means of support' who shall be 'habitually found prowling around any steamboat landing, railroad depot . . . store . . . or crowded thorough-

fare, car or omnibus'; persons loitering in or about any toilet, station, or station platform of a subway or elevated railway or of a railroad, and who are unable to give a satisfactory explanation of their presence; persons known to be pickpockets and having no lawful means of support, and not giving a good account of themselves when found loitering; persons lodging, or found in the nighttime in outhouses, sheds, barns, or unoccupied buildings, or lodging in the open air who do not give a good account of themselves; a person having his face painted appearing in a road, public highway, field, lot, or inclosure; females over the age of twelve who associate with vicious or dissolute persons; persons trespassing on private premises without giving a good account of themselves; and persons who shall lead an immoral course of life." (91 C. J. S. 787.)

State vagrancy statutes have been upheld as constitutional against the attack that these statutes were too broad or indefinite to state a public offense or infringing upon an individual's right of liberty. In the case of *Ex parte Cutler*, 36 P. (2d) 441 (1934), where this attack was made, the Supreme Court of California stated on page 445:

"We think that it is within the legislative power to define vagrancy, and to provide that those who indulge in pointless, useless wandering from place to place within the state, without any excuse for

> such roaming other than the impulse generated by what is sometimes denominated wanderlust, shall come within the definition, and that such individuals may properly be penalized as the statute ordains."

The Supreme Court of Illinois in the case of *People v. Klein*, 127 N. E. 72 (1920), held that a bill of information containing the following allegations was sufficient to properly charge the accused with vagrancy under the laws of Illinois, to-wit:

> ". . . that he was an idle and dissolute person and was habitually neglectful of his employment and calling, and did not lawfully provide for himself, and neglected all lawful business, and did habitually misspend his time without giving a good account of himself, and that he was known to be a pickpocket, having no lawful means of support, and was habitually found prowling in and loitering around thoroughfares, in violation of section 270 of chapter 38 of the Revised Statutes."

In the case of *City of New Orleans v. Postek, et al.*, 158 So. 553 (1935), the Court took up the question of the constitutionality of the City of New Orleans' vagrancy ordinances and held that these ordinances were within the city's police power to enact and were not void as class legislation or as denying due process of law.

The Louisiana law defining vagrancy is almost identical with the vagrancy statute passed by Congress which provides:

> "The following classes of persons shall be deemed vagrants in the District of Columbia: • • •
>
> "(8) Any person who wanders about the streets at late or unusual hours of the night without any visible or lawful business and not giving a good account of himself." D. C. Code (1940), Supp. VII, Sec. 22-3302).

This law came under the close scrutiny of the United States Court of Appeals, District of Columbia Circuit, in the case of *Beail v. District of Columbia*, 201 F. 176 (1952). The constitutionality of the law was not attacked obviously because it is so clearly constitutional. However, the Court did take up the complaint of the accused in this case that the accused under the vagrancy statutes is forced to testify against himself because he has to account for his presence. The Court of Appeals did not find any merit to his complaint.

In the case of *Eleanor R. Harris v. District of Columbia*, 132 A. (2d) 152 (1957), the Court in a vagrancy conviction said on page 154:

> ". . . It is next contended that the proof was insufficient to show that appellant was loitering or that she did not give a good account of herself. It was not the purpose of this statute to deprive persons of the use of public sidewalks, so long as they

> are used either for legitimate purposes of pleasure or business. But, when a course of conduct indicates a reasonable belief that the use of the streets is not for legitimate purposes, an officer may ask one to account for his actions."

And further, on page 155, the Court said:

> "We think the government offered sufficient evidence to sustain the conviction and having proved the required elements, the burden of proving she had lawful means of support shifted to the appellant."

The Court apparently did not feel that this statute violated the accused's rights to a presumption of innocence or his privileges under the Fifth Amendment.

III.

The Question Before the Court Is Moot Since the Accused Is No Longer in the Custody of the Respondent or Its Courts or Charged With the Offense Upon Which This Cause Is Based. *United States v. Brilliant*, 274 F. (2d) 618; Weber v. Squier, 315 U. S. 810, 62 S. Ct. 800, 86 L. Ed. 1209.

CONCLUSION.

For the reasons stated, it is urged that petitioner is not entitled to any of the relief sought by him, and,

accordingly, the judgment of the courts below should be affirmed.

Respectfully submitted,

JACK P. F. GREMILLION,
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State of Louisiana,
Baton Rouge, Louisiana;

M. E. CULLIGAN,
Assistant Attorney General;

BERTRAND DE BLANC,
District Attorney,
Fifteenth Judicial District Court,
Lafayette, Louisiana;

WILLIAM E. LOGAN, JR.,
Assistant District Attorney,
Attorneys for Respondent.

CERTIFICATE.

I, M. E. Culligan, attorney for the State of Louisiana, and a member of the bar of the United States Supreme Court, do hereby certify that a copy of the foregoing brief for respondent was served on the petitioner through his counsel of record, hereinbelow named, by placing the same in the United States mail, addressed to them at their offices with sufficient postage thereon annexed:

Simon & Trice, Attorneys at Law, 1408 Pinhook Road, Post Office Box 2241, Lafayette, Louisiana.

M. E. CULLIGAN

EXHIBIT "A."

STATE OF LOUISIANA
PARISH OF LAFAYETTE

AFFIDAVIT

BEFORE ME, THE UNDERSIGNED AUTHORITY, personally came and appeared:

Mayo Decou, info. rec'd.

Who, being duly sworn according to law, deposes and says:

That one Sidney J. Arceneaux, w/m at the Parish and State aforesaid did, on or about the 25th day of January, 1962.

did commit the crime of Vagrancy, as defined by R. S. 14:107 (8), in he was found on private grounds belonging to Meus Lagneaux, located in the 2nd Ward of Lafayette Parish, without being able to account for his lawful presence there,

Contrary to the form and statute in such cases made and provided against the peace and dignity of the State of Louisiana.

s/ Mayo Decou

Sworn to and subscribed before me this 26th day of January, 1962

s/ Joan R. Slaughter
Dy. Clerk of Court

WITNESSES:
Accused: Parish Jail

Warrant delivered to:
Sheriff Harson
Date Jan. 26, 1962

EXHIBIT "B."

November 13, 1962

EXTRACT OF MINUTES OF COURT

STATE OF LOUISIANA
VS
SIDNEY J. ARCENEAUX Number 7304

Lafayette, La., May 31, 1962

Court met this day pursuant to adjournment. Presiding Honorable Kaliste J. Saloom, Jr., City Judge; Dallas Broussard, City Marshal; William E. Logan, Jr., Asst. District Attorney; Sidney J. Arceneaux, Defendant, in attendance.

Number 7304 A Plea of Guilty was entered by Defendant Sidney J. Arceneaux to the charge of Vagrancy Sec.(8). It was ordered that the defendant be incarcerated in the Parish Jail for a period of 4 months from actual date of Incarceration which equal to time served. Notation was made that this affidavit was transferred from District Court.

STATE OF LOUISIANA: CITY OF LAFAYETTE

This is to certify that the above and foregoing are true and correct extract of the Minutes of Court of the City of Lafayette, Louisiana, date of May 31, 1962.

WITNESS MY HAND AND SEAL of Office at Lafayette, Louisiana, this 13th November, 1962.

s/ Joan R. Slaughter
DEP. CLERK OF CITY COURT

EXHIBIT "C."

THURSDAY, JUNE 7, 1962

Court met this day pursuant to adjournment, present Hon. Carrol L. Spell, Judge presiding; J. H. DiCarlo, Deputy Sheriff; Loreene R. Montgomery, Court Reporter; Bertrand DeBlanc, District Attorney; and Carolyn D. Walker, Deputy Clerk of Court, being in attendance.

• • • • • • • • •

14983 STATE OF LA.)
VS.) VAGRANCY
SIDNEY ARCENEAUX)

On motion of the District Attorney, leave of the Court being first had and obtained, case nolle prossed, bond of the accused cancelled and the accused released.

• • • • • • • • •

Whereupon, Court then adjourned until tomorrow, the 8th Instant, at 10 A. M.

s/ Carol L. Spell
JUDGE CARROL L. SPELL

STATE OF LOUISIANA
PARISH OF LAFAYETTE

THIS IS TO CERTIFY that the above and foregoing is a true and correct EXTRACT of the Minutes of Court of the 15th Judicial District Court in and for

the aforementioned Parish and State taken on the 7th day of June, 1962, A. D.

WITNESS MY HAND AND SEAL this 18th day of December, A. D. 1962.

s/ Mavis Romero

Mavis Romero, Deputy Clerk of Court
(SEAL)